Filed 7/21/09 Laskey v. Corning Cable Systems CA1/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

LAURIE MARIE LASKEY, Plaintiff and Appellant, v. CORNING CABLE SYSTEMS, LLC, Defendant and Respondent.	A123797 (Sonoma County Super. Ct. No. SCV-242058)

Laurie Marie Laskey filed a complaint in propria persona for personal injury against Corning Cable Systems, LLC (Corning). Corning filed a demurrer and motion to strike and the trial court sustained the demurrer and the motion to strike with leave to amend. Laskey filed an FAC and Corning again demurred. The trial court sustained the demurrer without leave to amend. Laskey appeals from the order sustaining the demurrer. The FAC is not in the record on appeal and Laskey has therefore not met her burden of establishing error. Accordingly, we conclude that the lower court properly sustained the demurrer without leave to amend.

BACKGROUND

On December 26, 2007, Laskey filed a complaint for personal injury and identity theft against Corning. She alleged causes of action for general negligence and products liability. She claimed the following: "[The] equipment is not tamper proof and when interconnected with other equipment caused a dangerous environment which resulted in a

security breach. Product causes identity theft." In her general negligence claim, she asserted that the injury occurred on October 31, 1996. She alleged the following: "Product was ordered and installed not in accordance with service requested. My evidence dates back to 1996 which is when I purchased a computer and started a small business which required an additional line installed. [¶] Product has the ability to cause identity theft and should be recalled. [¶] Product did not come with any form of operation and maintenance manuals for the end user to educated [*sic*] them as to proper installation. [¶] Product installation was external which allowed others access to product. Product is not tamper proof. [¶] Corning Cable Systems is maintaining a faulty system that facilitates an environment for hackers when split tunneling is used. [¶] Product has caused a security breach. [¶] Product has caused the theft of my identity on line. [¶] Product specifications are made public via the internet."

Corning filed a demurrer and a motion to strike Laskey's complaint. The trial court granted the demurrer and motion to strike with leave to amend.

On August 26, 2008, Laskey filed an FAC, which is not included in the record on appeal.[1] Corning demurred and moved to strike the FAC. Laskey filed no opposition and, on November 18, 2008, the court filed its order sustaining Corning's demurrer to Laskey's FAC without leave to amend.

On December 29, 2008, Laskey filed her notice of appeal.

DISCUSSION

I. *Jurisdiction*

No judgment of dismissal has been entered in this matter and Laskey is appealing from the order sustaining the demurrer. "An order sustaining a demurrer without leave to amend is *not* an appealable order; only a judgment entered on such an order can be appealed." (*I.J. Weinrot & Son, Inc. v. Jackson* (1985) 40 Cal.3d 327, 331, superseded by statute on another issue.) "The existence of an appealable judgment is a jurisdictional prerequisite to an appeal." (*Jennings v. Marralle* (1994) 8 Cal.4th 121, 126.)

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[1] The record includes the register of actions in the lower court.

Ordinarily we would dismiss this appeal as being premature, but Corning has addressed the merits of the appeal. We may deem the order sustaining the demurrer without leave to amend as incorporating the judgment of dismissal in order to prevent further delay. (See, e.g., *Hinman v. Department of Personnel Admin.* (1985) 167 Cal.App.3d 516, 520, superseded by statute on another issue [court has discretion to consider on the merits an appeal from an order sustaining a demurrer without leave to amend].) To avoid delay we deem the order sustaining the demurrer as incorporating the judgment of dismissal and decide Laskey's appeal on its merits.

II. *Standard of Review*

The standard of review governing an appeal from the judgment after the trial court sustains a demurrer without leave to amend is well established. " 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff. [Citation.]" (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Additionally, we note that Laskey is in propria persona, but a party appearing in propria persona "is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys." (*Barton v. New United Motor Manufacturing, Inc.* (1996) 43 Cal.App.4th 1200, 1210.) " '[T]he in propria persona litigant is held to the same restrictive rules of procedure as an attorney.' " (*Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1125-1126; accord, *First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 958, fn. 1.)

III. *Laskey Has Failed to Demonstrate Error*

Laskey did not designate the FAC or Corning's demurrer to the FAC as part of the record on appeal. No party has provided this court with these documents and therefore we cannot review these critical documents. Corning contends that, since an appealed judgment is always presumed correct and the appellant has the burden of overcoming this presumption by affirmatively showing error on an adequate record (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141), Laskey cannot demonstrate any error (see *Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502) and we must affirm the lower court's order.[2]

In reviewing an order sustaining a demurrer, this court must determine whether the factual allegations of the complaint are adequate to state a cause of action. Without at least the FAC, we have nothing to review and no basis for ascertaining error. We therefore cannot move beyond our starting presumption that appealed judgments and orders are correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It is the appellant's burden to overcome this presumption and affirmatively show error by providing not only argument but also an adequate record establishing the alleged error. When the appellant fails to supply an appellate record sufficient for meaningful review, "the appellant defaults and the decision of the trial court should be affirmed." (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1051, fn. 9; accord, *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296; *Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.)

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[2] We note that, not only is the record inadequate, but Laskey's brief does not comply with the California Rules of Court. Her brief violates the California Rules of Court, rule 8.204(a)(1) by not containing a statement of appealability, omitting a table of contents, failing to provide citations to the record, not including a statement of the action's procedural history, and not containing a summary of significant facts limited to matters in the record. Laskey also has failed to provide any pertinent legal argument and has not explained the relevance of the various federal statutes that she does cite. (See, e.g., *Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979 [" 'This court is not required to discuss or consider points which are not argued or which are not supported by citation to authorities or the record' "].)

Laskey has not met her burden as appellant to demonstrate error; thus, the presumption of correctness remains and the challenged order must be upheld. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575; *Pringle v. La Chapelle* (1999) 73 Cal.App.4th 1000, 1003; *Hernandez v. California Hospital Medical Center, supra,* 78 Cal.App.4th at p. 502.)

DISPOSITION

The judgment is affirmed. Corning is awarded costs.

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Lambden, J.

We concur:

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Kline, P.J.

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Richman, J.